



STATE OF MICHIGAN
**Department of
Human
Services**

Memo

**Michigan Domestic Violence
Prevention & Treatment Board**
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To: House Judiciary Committee members
From: Lore A. Rogers, J.D., on behalf of members of the Michigan Domestic Violence Prevention & Treatment Board
Date: Jan. 19, 2012
RE: HB 4532, as introduced (unauthorized access to computers, computer systems)

The members of the Michigan Domestic Violence Prevention and Treatment Board have not taken a specific position regarding HB 4532, but they reviewed it and expressed concerns at a meeting in 2011. I am here today on behalf of the Board to share those concerns with you.

The Board appreciates that in drafting these proposals, effort was made to prohibit abusive spouses from accessing their partners' computers and electronic messages. However, the proposed amendments nonetheless create safety concerns for victims who are living in the marital home, but considering whether or how to leave to escape abuse. The exception for spouses to have unauthorized access creates an avenue for abusive spouses to stalk, spy on, and interfere with communications of their spouses, placing survivors of domestic violence in greater danger and limiting their options for safeguarding privacy and communicating with others to plan for their safety.

- Domestic violence typically involves one partner's deliberate efforts to control the life of the other, and efforts to leave the relationship can trigger serious – and even lethal – violence. An abusive spouse may monitor a victim's communications and contacts with others to discover and thwart plans to leave the relationship.
- Abusers may also use electronic technology to assert power over victims by letting victims know that their every move is being monitored. Abusers interfere with victims' communications with others in order to cut them off from support and assistance.
- Abusers can be adept at using technology to their advantage in monitoring and controlling the behavior, plans and financial resources of their partners. Some abusers install "spyware" on victims' computers to learn what internet sites their partners have visited, to read documents in their partners' electronic files, and to monitor other activity on their partners' computers. Abusive partners may also install "keystroke logger" programs on their partners' computers, allowing re-creation of the user names and passwords used to access secure sites such as online financial accounts or e-mail systems.
- Less sophisticated abusers may figure out their partners' passwords through a process of trial and error. Such activities sometimes result in identity theft. They also allow abusers to exert financial control over their partners, or to intercept, read, and respond to their partners' correspondence.
- Victims cannot always safely tell their spouses not to access their computers, having learned from past abuse that doing so may result in punishment and retaliation. Further, an abusive spouse need not use

force or coercion to install spyware or keystroke logging programs onto a victim's computer, to search through a victim's papers or files to find a password, or to guess a password.

The spousal exception makes non-criminal acts which otherwise would be criminal if engaged in by and against people who do not have a marital relationship. In so doing, it provides spouses – and in particular, abused spouses – with less protection from the State. This is counter to the general philosophy which has guided development of Michigan's criminal statutes with respect to domestic violence and sexual assault over the last 30 years, namely that the State should not exempt from liability acts against a spouse which would be considered crimes when engaged in by someone not married to the victim.

Finally, the Board shares the concern that parents be able to monitor their children's use of computer and email technology to protect their children from unsafe internet activity and from online predators. However, the amendment creates an opportunity for an abusive spouse and parent to use a child's e-mail service to prevent or interfere with communication between that child and the non-abusive parent, for malicious reasons that are not in the best interests of the child. While it has not taken an official position, the Board has considered recommending that subsection 3 be amended to permit parental access to a child's computer and e-mail systems where a parent has a good faith, objectively reasonable basis for believing that such access is in the child's best interest.